

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

KEVIN KING,

Plaintiff,

v.

Case No. 2:07-cv-133  
HON. GORDON J. QUIST

JERI-ANN SHERRY, et al.,

Defendants.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on August 18, 2008. The Report and Recommendation was duly served on the parties. The Court has received objections from Plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

The magistrate judge recommended that Plaintiff's motion for a temporary restraining order be denied. Plaintiff has the burden of establishing that he is entitled to the extraordinary remedy of injunctive relief. Plaintiff has not established a substantial likelihood of success on the merits of his claims. Plaintiff's burden was to show that Defendants acted with deliberate indifference to his need for a smoke-free environment. Defendants established that plaintiff was in a housing unit with other prisoners who had requested to be free from environmental tobacco smoke (ETS) exposure. Prisoners did violate, and continue to violate, housing unit rules. Misconducts tickets are issued to prisoners caught smoking in the facility. Moreover, the Michigan Department

of Corrections has issued a ban on all tobacco use effective February 2009. Plaintiff asserts that this will not help him be free from ETS right now. However, this ban is evidence that Defendants and the Michigan Department of Corrections have taken this matter seriously. Plaintiff has not established that any of the Defendants acted with deliberate indifference to his asserted need for a smoke-free environment. Further, while Plaintiff has presented some evidence that he has suffered medical problems, Plaintiff has not established that he will suffer irreparable harm absent immediate injunctive relief. Plaintiff has not established that he is entitled to injunctive relief under the standards set forth in *Planned Parenthood Association v. City of Cincinnati*, 822 F.2d 1390, 1393 (6th Cir. 1987).

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #70) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion For Immediate Preliminary Injunctive Relief (Docket #9) is DENIED.

Dated: September 29, 2008

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/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE